



**Federal Communications Commission
Washington, D.C. 20554**

February 25, 2019

In Reply Refer to: 1800B3-KV

Illinois District Council of the Assemblies of God
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In re: W284DA, Chicago, IL
File No. BLFT-20180821AAR
Facility ID No. 155174

**Petition for Reconsideration; and
Complaint**

Dear Counsel:

This letter refers to: (1) the referenced application for license to cover filed by Polnet Communications, Ltd. (Polnet or Licensee), for FM Translator Station W284DA, Chicago, Illinois (W284DA or Station), and granted by the staff on August 28, 2017 (August 2017 License);¹ (2) the September 5, 2017, Petition for Reconsideration (Petition) filed by Illinois District Council of the Assemblies of God (IDCAG or Petitioner), licensee of co-channel Class B Station WCFL(FM), Morris, Illinois, alleging interference from W284DA; and (3) IDCAG's "Complaint," filed May 31, 2017, as an Informal Objection (Complaint), in the Media Bureau's (Bureau) consolidated database (CDBS).² For the reasons below, we grant the Petition to the extent indicated herein and otherwise dismiss it, rescind the August 2017 License, grant the Complaint, and order the Station to cease operation.

Background. *February 2017 License.* On February 1, 2017, Commission staff granted Polnet's

¹ The Station operates as a translator for the co-owned primary Station WRDZ(AM), La Grange, Illinois.

² Also before us are the following related pleadings: (1) Polnet's June 13, 2017, "Reply to Complaint" (Polnet 2017 Reply); (2) IDCAG's June 13, 2017, "Supplement to Complaint" (Supplement); (3) Polnet's February 23, 2018, "Reply to Interference Complaint" (Polnet February 2018 Reply); (4) IDCAG's February 26, 2018, "Response to Polnet's Reply to Interference Complaint" (IDCAG February 2018 Response); (5) Polnet's April 13, 2018, "Supplemental Reply to Interference Complaint" (Polnet April 2018 Supplemental Reply) and (6) IDCAG's April 17, 2018, "Response to Polnet's Supplemental Reply to Interference Complaint" (IDCAG April 2018 Response).

application for a license to cover (February 2017 License)³ a modified construction permit⁴ to relocate the Station's antenna, change the effective radiated power (ERP) to 50 Watts, and install a single-bay, vertically polarized, antenna mounted at 360 meters above ground level (AGL) at 325 degrees.⁵ Subsequently, on May 8, 2017, Commission staff granted Polnet's application for a further minor modification of the Station's facilities (2017 Permit),⁶ which proposed only to increase the Station's ERP to 99 Watts and "rotate the antenna 10 degrees clockwise in order to continue to protect WCFL(FM)."⁷

On May 31, 2017, IDCAG filed the Complaint against the Station's facilities, as authorized by the February 2017 License and the then unconstructed 2017 Permit, arguing that Station was causing actual interference to WCFL(FM) listeners and construction of the 2017 Permit was "expected to worsen, not improve, the interference being caused."⁸ In support, IDCAG attached 24 signed, listener declarations (collectively, the Original Complainants),⁹ dated May 26–30, 2017, with each listener reporting: (1) name and address; (2) identification as a WFCL(FM) listener experiencing interference caused by the Station; (3) the location where the interference occurred; and (4) no personal or business ties to WCFL(FM).¹⁰

On June 13, 2017, Polnet replied that it had resolved the interference by repairing the Station's damaged equipment. Specifically, Polnet reported that, after receiving the Complaint, it inspected the Station's antenna site and discovered "a supporting brace on the antenna platform had broken, causing the antenna to list to the side. Polnet indicates that it immediately powered down the Station while it undertook repairs"¹¹ and that after completing repairs "its consulting engineer drove through the areas identified by IDCAG and detected no interference."¹² Polnet opined that it had been unable to reach IDCAG's engineer, but, if contacted, pledged to resolve any remaining concerns.

Also on June 13, 2017, IDCAG filed a Supplement to its Complaint containing 19 new, signed, listener declarations, dated May 26–31, 2017, (collectively, the Supplemental Complainants)¹³ with each

³ See File No. BLFT-20170118ABH.

⁴ See File No. BMPFT-20160830ABT (2016 Permit).

⁵ *Id.* at Exh. 13.

⁶ See File No. BPFT-20170410ACO.

⁷ *Id.* at Exh. 13, p.1.

⁸ Complaint at 2, note 3.

⁹ The following listeners submitted complaints: Jeff Lope (interference to reception of WCFL(FM) at home and work); Todd A. Newton (home, work, car); Katy Newton (home, work, "everywhere"); Katherine Aude (car between work and home); Angela Zheng (car travelling to school); Amy Visser (home, car); Stephanie Raquel (home, car); Kelly Duhamel (home, car driving to Naperville); Kay Zorn (home, car while travelling in eastern DuPage County); Susan Brown (home, car); Faith Allman (car); Bonnie Bulger (car); Cathy Hill (home, car, office); Joseph Kluber (home, office, travelling around the Fox Valley, Illinois area); Amy Luetgert (home, car); Jordan Lints (home, car); Deborah Lints (home, car driving around Aurora/Naperville/DeKalb); Karlene Endres (home, work, car); Scott Parsons (home, work); Sheri Parsons (home, car [Batavia to Elgin]; Abbylyn Parsons (car: Batavia to Carol Stream); Donald R. Walker (home, car); Leslie O'Hara (home, car [Carol Stream to Lombard]); and Margaret Ereneta (home, car [Lisle, Naperville, Woodridge]). See Complaint, Exh. A.

¹⁰ *Id.*

¹¹ Polnet 2017 Reply at 1.

¹² *Id.* at 1-2.

¹³ The following listeners submitted complaints: Nancy B. Baird (car traveling between home and work [Naperville]); Margaret A. Orland (home, car and at work [St. Charles]); Keith B. Orland car traveling between home and work [Elgin, IL]); Dorothy Carlson (home, car); Debbi L. Briggs (home, work, car [Wheaton, Warrenville, Aurora, West Chicago, Lombard]); Cameron Briggs (home, car, [Warrenville, Glendale Heights, Bloomingdale]); Madison Briggs (work, car [Wheaton, Geneva, West Chicago, Naperville, Lisle]); Rich Briggs (car [Geneva, West Chicago, Warrenville]); Carly Briggs (home, car [Warrenville, Wheaton, Lisle, North Aurora]); Darnell Barrett (Barrett) (car, at studio in Chicago); Josh Adam (Wheaton, Warrenville); Cynthia Panza (home, car); Christine C.

listener, except one,¹⁴ reporting: (1) name and address; (2) identification as a WCFL(FM) listener experiencing interference caused by the Station; (3) the location where the interference occurred; and (4) no personal or business ties to WCFL(FM).¹⁵

August 2017 License. On August 21, 2017, Polnet filed a license application to cover the 2017 Permit, which was accepted for filing on August 22, 2017.¹⁶ Commission staff granted that license on August 28, 2017.¹⁷

On September 5, 2017, IDCAG filed the Petition, arguing that the August 2017 License should be rescinded with the license application denied, and the Station should be ordered to cease operations. First, IDCAG contends that the Bureau failed to consider the Complaint alleging interference caused by the Station's operations at 50 Watts ERP, as then authorized by the February 2017 License, and asserting that an increase to 99 Watts ERP, authorized by the 2017 Permit, would likely exacerbate the interference. Next, IDCAG asserts that Station's operations under the August 2017 License is causing interference and attached 18 new, signed, listener declarations (collectively, the Reconsideration Complainants); it states it was unable submit the Reconsideration Complainants during the six day period between acceptance of the license application and grant of the August 2017 License.¹⁸ The Reconsideration Complainants, dated August 30, 2017, except one on June 21, 2017,¹⁹ each reported the listener's: (1) name and address; (2) identification as a WFCL(FM) listener experiencing interference caused by the Station; (3) the location where the interference occurred; and (4) no personal or business ties to WCFL(FM).²⁰

On January 29, 2018, the Bureau sent Polnet a letter requiring it to respond within 30 days to the listener complaints reporting interference to their reception of WCFL(FM) submitted with the September 5, 2017, Petition.²¹ In addition, the Bureau noted that "the obligation to resolve interference complaints is ongoing."²² Specifically, the Bureau directed Polnet to submit a detailed report addressing the listener complaints including: "(1) the name and address of each complainant; (2) specific devices receiving the interference (*i.e.* type of device, manufacturer's name, model number, and serial number); and (3) any assistance provided by W284DA for each device allegedly receiving the interference and whether such

Murray (car [Palentine, Naperville, Lisle]); Sandra J. Seifert (truck, "wherever I go"); Peggy A. Glaser-Silva (home, car [traveling "anywhere, but especially Dixon and Chicago"]); Mark Ruschman (home, traveling from home to work [Warrenville]); Kim L. Graf (home, car); Laura Koran (home, work, car); and Linda V. Luedtke (work [Naperville], travelling "downstate from Naperville – South on I55"). See Supplement at 4-22.

¹⁴ Listener Barrett did not list his street address. *Id.* at 9.

¹⁵ *Id.* at 4-22.

¹⁶ See *Broadcast Applications*, Public Notice, Report No. 29056 (MB rel. Aug. 22, 2017).

¹⁷ See *Broadcast Actions*, Public Notice, Report No. 49061 (MB rel. Aug. 31, 2017).

¹⁸ The following listeners submitted complaints: Julie Dively (home, traveling to and from work [Yorkville]); Thomas Rowley (home, work, car, motorcycle [Plainfield]); Lisa Rowley (home, work, car [Plainfield]); Sandra Shelton (car); Mark Shelton (car); Victoria Foley (car traveling to work [St. Charles] and everywhere); Myria Kelly (home, work, car [Downers Grove]); Maryann Brady (home, work, car); Michael D. Brady (home, car); Daniel F. Brady (car); Steven M. Brady (car); Mary T. Zmuda (home, daughter's car); Kelli Goodwin (home, work [Lenox], car [Chicago]); John Magemeneas (home); Dustin Magemeneas (home, car [Plainfield]); Scott H. Turvey (home, work [Plainfield], work [Joliet], car [Dolton]); Heather Wachter (home, car [Aurora, Naperville] and Teri Moe (home, work, car, [Aurora and all other times]) (Moe). See Petition, Exh. A.

¹⁹ Listener Moe. *Id.* at 17.

²⁰ *Id.*, Exh A.

²¹ See Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau to Polnet Communications, Ltd., (dated Jan. 29, 2018) (*Bureau Letter*).

²² *Bureau Letter*, at 2, note 4.

interference persists.”²³ The Bureau further noted that “[f]ailure to correct all complaints within this time may require W284DA to suspend operation pursuant to 47 CFR §§ 74.1203(e) and 74.1232(h).”²⁴

In its February 2018 Reply, Polnet reiterated that on June 4, 2017, it repaired the Station’s antenna, and on June 5, 2017, its engineer visited each listed interference location and determined there was no interference. Polnet stated that “[s]ince the repairs were completed . . . Polnet has not received any further complaints of interference”²⁵

In its February 2018 Response, IDCAG charges that Polnet did not address the Reconsideration Complainants, but rather “re-hashed” its response concerning the Original Complainants. IDCAG argues that the Bureau should “put a stop to Polnet’s repeated attempts to dodge its responsibilities . . . and direct that W284DA immediately cease operations in accordance with the [*Bureau Letter*] and § 73.1203(a).”²⁶

Polnet responded, in its April 2018 Supplemental Reply, that the interference had been either resolved, was not caused by the Station, or WCFL(FM)’s signal was unable to be received at the location.²⁷ Specifically, Polnet’s consulting engineering, Kent Gustafson (Gustafson), declared,²⁸ in pertinent part:

On June 4, 2017, Polnet repaired the [Station’s] facility

On June 5, 2017, I visited each area where interference had been reported to confirm that W284DA was not causing any interference to the WCFL signal.

I spent five days in March 2018 visiting the locations reported in the complaints . . . and attempting to recreate the routes by the complainants to determine if W284DA was causing any unexpected interference to WCFL.

Although I did my best to identify the locations specified in the complainants; the form complaint letters . . . did not include contact information for the complainant and only identified the locations where the complainants listen to the station rather than where they experience interference.

At each location, I found that either: (1) WCFL’s signal could be received without interference; (2) the interference to WCFL was caused by another station (WFRN-FM, a class B station in Elkhart, Indiana), or (3) WCFL’s signal was simply too weak to be received.²⁹

I also recorded sample audio recordings from some locations demonstrating either interference from another station or that WCFL’s signal was too weak to be received. A file containing those recordings is attached hereto as Attachment 2.³⁰

²³ *Id.* at 1

²⁴ *Id.*

²⁵ Polnet February 2018 Reply.

²⁶ IDCAG February 2018 Response at 2.

²⁷ Polnet also amplifies on a prior argument, indicating that it had “provided regular updates” to WCFL(FM)’s consulting engineer, and since completion of its repairs on June 5, 2017, “not once has WCFL’s engineer indicated that he believes W284DA is causing improper interference to WCFL’s signal.” April 2018 Supplemental Reply at 1-2 and “Declaration of Kent Gustafson” (dated Apr. 13, 2018) (Gustafson Declaration), Exh. A., paras. 8-9.

²⁸ *See* Gustafson Declaration.

²⁹ Gustafson attaches a “Survey of Reception from Locations in Complaint”, Attachment 1, *Id.*, describing Gustafson’s reception results in March 2018 for five of the Reconsideration Complainants, and all Original Complainants and Supplemental Complainants.

³⁰ According to CDBS, the Polnet April 2018 Supplemental Reply does not include an Attachment 2.

Polnet again pledged to address any new complaints it received.

Finally, in its April 2018 Response to Polnet's Supplemental Reply, IDCAG claims that the interference remains unresolved and ongoing. IDCAG contends that Polnet did not address the Bureau's directive, set forth in the *Bureau Letter*, as Polnet did not contact any listeners who filed complaints, despite their providing contact information, and failed to detail the listeners' devices receiving interference and assistance that it provided.³¹ IDCAG also argues that, although its engineer may not have contacted Mr. Gustafson about continuing interference caused by W284DA, IDCAG's submission of 19 new interference complaints, in its June 2017 Supplement, "made it abundantly clear" that IDCAG believed that W284DA was still causing improper interference to the reception of WCFL(FM).³²

Discussion. Procedural Issues. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.³³ If the petitioner is not a party to the proceeding, it must state with particularity the manner in which its interests are adversely affected and show good reason why it was not possible to participate in the earlier stages of the proceeding.³⁴ In addition, Section 1.106(e)³⁵ of the Rules stipulates that any petition for reconsideration based on a claim of electrical interference must be accompanied by an affidavit of a qualified engineer.

The Petition cites two grounds for reconsideration: 1) harmful interference caused by the Station's operations as authorized by the August 2017 License; and 2) the failure to consider, prior to grant of the August 2017 License, the Complaint alleging harmful interference caused by the Station's operations as authorized by the February 2017 License.

Regarding the harmful interference allegations involving the August 2017 License, we find that the Petition is not supported by an engineering affidavit as required by Section 1.106(e) of the Rules. Therefore, the Petition is procedurally defective on these allegations. We further find that it was staff error to direct Polnet to respond to the Reconsideration Complainants.³⁶ We will, therefore, dismiss the Petition to the extent it relies on these complainants and will not consider the Reconsideration Complainants.³⁷

With respect to the interference allegations concerning the February 2017 License, set forth in the Complaint, IDCAG alleged that the Station's operations at 50 Watts ERP were causing harmful interference and that Station operations at 99 Watts at the same transmitter location, pursuant to the 2017 Permit, would increase the interference. Under these circumstances, we find that it was material error not to consider the Complaint before granting the August 2017 License. We will, therefore, grant the Petition to this extent, rescind the grant of the August 2017 License, and review the Complaint below.³⁸

³¹ IDCAG April 2018 Response at 2-4.

³² *Id.* at 4.

³³ See 47 CFR § 1.106(c)-(d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2. (1964).

³⁴ 47 CFR § 1.106(b)(1).

³⁵ 47 CFR § 1.1.06(e).

³⁶ See *International Broadcasting Network*, Memorandum Opinion and Order, 2 FCC Rcd 2544, 2545, para. 11 (1987) (It is well settled that the Commission may correct a subsequently discovered staff error.)

³⁷ See e.g. *New NCE-FM, Bishop, CA*, Letter, 25 FCC Rcd 4474, 4476 (MB 2010) (dismissing reconsideration petition alleging interference without an engineering affidavit).

³⁸ See 47 U.S.C. § 312(a)(2) (The Commission can rescind a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application"). See also e.g. *WSRC(FM)*, Letter Order, 29 FCC Rcd 112, 114 (MB 2014).

Substantive. Section 74.1203(a) provides, in pertinent part, that an FM translator station “will not be permitted to continue to operate if it causes any actual interference to ... the direct reception by the public of off-the-air signals of any authorized broadcast station”³⁹ The rule places no geographic or temporal limitation on complaints, and we have long held that mobile receivers, such as automobile radios, should not be subject to interference resulting from the operation of an FM translator or booster station.⁴⁰ The FM translator rules strictly prohibit interference by these secondary service stations, and an interfering FM translator station must remedy the interference or suspend operation.⁴¹

Actual interference is based on a complaint from one or more *bona fide* listeners indicating that the signal they regularly receive is being impaired by the signal radiated by the FM translator station. The Commission has interpreted “direct reception by the public” to limit actionable complaints to those that are made by *bona fide* listeners.⁴² Thus, it has declined to credit claims of interference⁴³ or lack of interference⁴⁴ from station personnel involved in an interference dispute. More generally, the Commission requires that a complainant “be ‘disinterested,’ *e.g.*, a person or entity without a legal stake in the outcome of the translator station licensing proceeding.”⁴⁵

The Commission has opined that “the staff has routinely required a complainant to provide his or her name, address, location(s) at which FM translator interference occurs, and a statement that the complainant is, in fact, a listener of the affected station.”⁴⁶ Moreover, as is the case with other types of interference complaints,⁴⁷ the staff has considered only those complaints of FM translator interference where the complainant cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.⁴⁸ Accordingly, when the Commission concludes that a *bona fide* listener has made

³⁹ 47 CFR § 74.1203(a).

⁴⁰ See, *e.g.*, *Forus FM Broad. of New York, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 7880, 7882, para. 16 (MB 1992) (because of the secondary nature of FM booster stations, and the resulting requirement that they provide interference-free service, such stations will not be permitted to cause interference to mobile receivers).

⁴¹ 47 CFR § 74.1203(b).

⁴² See *Ass’n for Cmty. Educ., Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004) (*Ass’n for Cmty. Educ.*).

⁴³ See *id.*

⁴⁴ See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15070, 15077, n.46 (2008).

⁴⁵ *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688 n.37.

⁴⁶ See *Translator NPRM*, FCC 18-60, at para. 7 (2018) (citing *Creation of an LPFM Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15431-31 para. 83 (2012)).

⁴⁷ See, *e.g.*, *Money Matters Radio, Inc.*, Letter Order, 23 FCC Rcd 1879, 1883 (MB 2008) (requiring complainants to cooperate fully with the station’s efforts to resolve interference and cautioning that the failure to do so could lead to a finding that the station has fulfilled its interference remediation obligations).

⁴⁸ See *Radio Power, Inc.*, Letter Order, 26 FCC Rcd 14385, 14385-86 (MB 2011) (*Radio Power*) (listing grounds that translator licensee claimed are sufficient to conclude that complainant has failed to reasonably cooperate and finding that a listener may reasonably reject a non-broadcast technology to resolve interference claim).

an actionable complaint⁴⁹ of uncorrected interference from an FM translator, it will notify the station that “interference is being caused” and direct the station to discontinue operations.⁵⁰

The issue before us is whether Polnet has eliminated the actual interference caused by the Station to the 24 Original Complaints⁵¹ and the 19 Supplemental Complainants.⁵² Of these 43 listeners, Polnet has failed to resolve all but the complaint filed by Barrett, who failed to list his contact information and was, therefore, unreachable.⁵³ Regarding the remaining 42 listeners, we find that they provided adequate contact information, listing names and street addresses, where Polnet could reach them. Polnet, however, provided no evidence that it attempted to contact these listeners. Moreover, as discussed in footnote 49, we are unable to accept Polnet’s engineering showings concerning its interference findings. Therefore, because Polnet did not contact these 42 listeners to remediate their interference issues, we conclude that Polnet has failed to eliminate the interference and that Station W284DA must suspend operations.

Conclusion. Based on the above, IT IS ORDERED, that the Petition for Reconsideration filed by Illinois District Council of the Assemblies of God on September 5, 2017, IS GRANTED TO THE EXTENT INDICATED HEREIN AND IS OTHERWISE DISMISSED.

IT IS FURTHER ORDERED that the August 28, 2017, grant of application for a license to cover (File No. BLFT-20180821AAR) filed by Polnet Communications, Ltd. on August 21, 2017, IS RESCINDED AND THE APPLICATION IS RETURNED TO PENDING STATUS.

IT IS FURTHER ORDERED that the Complaint filed by Illinois District Council of the Assemblies of God on May 31, 2017, and supplemented on June 13, 2017, IS GRANTED.

⁴⁹ Because only a complaint from a *bona fide* listener of the desired station can force a translator station to suspend operation, Polnet’s engineering declaration and tests, submitted as an unmarked exhibit to the Polnet April 2018 Reply, do not meet that criterion. See, e.g., *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 16 (station’s engineer locating the points on a map where the translator had interfered with the stations’ signal as he drove around the full-service station’s coverage area listening to the car radio did not meet that criterion) and *Valley Broad., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 4317, 4316, para. 26 (MB 1992) (tests for booster interference were conducted under Special Field Test Authority by a neutral party, using a mobile receiver and a stationary receiver. The application was granted with the *caveat* that if the booster station resulted in listener interference complaints, the permittee would be required to discontinue its operation until all complaints had been resolved). Likewise, the referenced engineering showings and interference observations presented by Polnet are not probative because Section 74.1203(b) does not allow us to rely on such information.

⁵⁰ See 47 CFR § 74.1203(e); see also *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 131 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. denied*, 8 FCC Rcd 5093 (1993); *Ass’n for Cmty. Educ.*, 19 FCC Rcd at 12688, para. 15.

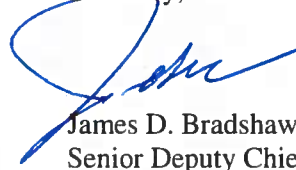
⁵¹ See *supra* note 9.

⁵² See *supra* note 13.

⁵³ See *supra* note 14.

IT IS FURTHER ORDERED that pursuant to Sections 74.1203 and 0.283 of the Rules, based on the above, Polnet Communications, Ltd. IS HEREBY ORDERED TO CEASE OPERATION OF STATION W284DA, Chicago, Illinois, IMMEDIATELY.⁵⁴

Sincerely,



James D. Bradshaw
Senior Deputy Chief
Audio Division
Media Bureau

⁵⁴ Please note that any request by Polnet to operate with reduced/temporary facilities on this same channel will only be granted upon a demonstration that the proposed facilities will not cause interference at all of the listening locations provided by the remaining listeners.